



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR



Date Mailed: April 17, 2017  
MAHS Docket No.: 17-000146  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Janice Spodarek**

### **DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon Petitioner's request for a hearing.

After due notice, a hearing was held on April 11, 2017. Petitioner appeared and testified. Senior Community Care of Michigan Volunteers of America, the PACE organization, Respondent and subcontractor with the Michigan Department of Health and Human Services, was represented by Kim Macintzer, Executive Director. Thompkins appeared as a witness for the Respondent.

### **ISSUE**

Did Respondent properly deny Petitioner's request for an electric wheelchair through the Program of All-Inclusive Care for the Elderly (PACE)?

### **FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Senior Community Care of Michigan is an organization that contracts with the Michigan Department of Health and Human Services ("MDHHS" or "Department") and oversees the PACE program in Petitioner's geographical area. (Exhibit A; Testimony).
2. Petitioner is a 69 year-old woman, who is 5 feet 5 inches and weighs 184 pounds. Petitioner's BMI is 30.6, classifying Petitioner as obese on the body mass index. (Exhibit A).

3. Petitioner has a manual wheelchair.
4. On or about October 4, 2016, Petitioner requested an electric wheelchair. (Exhibit A).
5. On October 13, 2016, the Respondent sent Petitioner written notice that her request for a power wheelchair through the PACE program was being denied. The Notice indicated that the request was denied because the multidisciplinary team determined that using a power wheel chair will not improve Petitioner's ADL performance in the home, and is not in line with Petitioner's care plan. In addition, the denial stated that the use of a power wheel chair could lead to a functional decline. (Exhibit A).
6. Petitioner requested an internal appeal and on November 25, 2016 Carlton Nogle, Project Choice Director with the Tri-County Office on Aging upheld the denial. (Exhibit A.).
7. On January 12, 2017, the Michigan Administrative Hearing System (MAHS) received a request for hearing in this matter. (Exhibit 1).

### **CONCLUSIONS OF LAW**

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

PACE services are available as part of the Medicaid program:

The Program of All-Inclusive Care for the Elderly (PACE) is an innovative model of community-based care that enables elderly individuals, who are certified by their state as needing nursing facility care, to live as independently as possible.

PACE provides an alternative to traditional nursing facility care by offering pre-paid, capitated, comprehensive health care services designed to meet the following objectives:

- Enhance the quality of life and autonomy for frail, older adults;
- Maximize the dignity of, and respect for, older adults;

- Enable frail, older adults to live in the community as long as medically and socially feasible; and
- Preserve and support the older adult's family unit.

The PACE capitated benefit was authorized by the Balanced Budget Act of 1997 and features a comprehensive service delivery system with integrated Medicare and Medicaid financing.

An interdisciplinary team, consisting of professional and paraprofessional staff, assesses beneficiary needs, develops a plan of care, and monitors delivery of all services (including acute care services as well as nursing facility services, when necessary) within an integrated system for a seamless provision of total care. Typically, PACE organizations provide social and medical services in an adult day health center supplemented by in-home and other services as needed.

The financing model combines payments from Medicare and Medicaid, allowing PACE organizations to provide all needed services rather than be limited to those reimbursable under the Medicare and Medicaid fee-for-service systems. PACE organizations assume full financial risk for beneficiary care without limits on amount, duration, or scope of services.

Physicians currently treating Medicaid patients who are in need of nursing facility care may consider PACE as an option. Hospital discharge planners may also identify suitable candidates for referral to PACE as an alternative to a nursing facility. (Refer to the Directory Appendix for PACE contact information.)

## **SECTION 2 – SERVICES**

The PACE organization becomes the sole source of services for Medicare and Medicaid beneficiaries who choose to enroll in a PACE organization.

The PACE organization is able to coordinate the entire array of services to older adults with chronic care needs while allowing elders to maintain independence in the community for as long as possible. The PACE service package must

include all Medicare and Medicaid covered services, in addition to other services determined necessary by the interdisciplinary team for the individual beneficiary. Services must include, but are not limited to:

- Adult day care that offers nursing, physical, occupational and recreational therapies, meals, nutritional counseling, social work and personal care
- All primary medical care provided by a PACE physician familiar with the history, needs and preferences of each beneficiary, all specialty medical care, and all mental health care
- Interdisciplinary assessment and treatment planning
- Home health care, personal care, homemaker and chore services
- Restorative therapies
- Diagnostic services, including laboratory, x-rays, and other necessary tests and procedures
- Transportation for medical needs
- All necessary prescription drugs and any authorized over-the-counter medications included in the plan of care
- Social services
- All ancillary health services, such as audiology, dentistry, optometry, podiatry, speech therapy, prosthetics, durable medical equipment, and medical supplies
- Respite care
- Emergency room services, acute inpatient hospital and nursing facility care when necessary
- End-of-Life care

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### 3.11 APPLICANT APPEALS

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#### 3.11.C. PACE SERVICES

Non-coverage or nonpayment of services by the PACE organization for a beneficiary enrolled in PACE is an adverse action. If the beneficiary and/or representative disagrees with the non-coverage or nonpayment of services by the PACE organization, they have the right to request an administrative hearing before an administrative law judge. Information regarding the appeal process may be found on the Michigan Administrative Hearing System (MAHS) website. (Refer to the Directory Appendix for website information.) The beneficiary may request continuation of the disputed service with the understanding that he may be liable for the cost of the disputed service if the determination is not made in his favor.

*Medicaid Provider Manual  
Program of All-Inclusive Care for the Elderly Chapter  
October 1, 2015, pp 1-2, 6*

With regard to power wheelchairs, Medicare guidelines state:

Medicare Part B (Medical Insurance) covers power-operated vehicles (scooters), walkers, and wheelchairs as durable medical equipment (DME). Medicare helps cover DME if:

- The doctor treating your condition submits a written order stating that you have a medical need for a wheelchair or scooter for use in your home.
- You have limited mobility and meet **all** of these conditions:
  - You have a health condition that causes significant difficult moving around in your home.
  - You're unable to do activities of daily living (like bathing dressing, getting in or out of a bed or chair, or using the bathroom), even with the help of a cane, crutch, or walker.

*(Exhibit A, p 15)*

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The Respondent testified that they received a request from Petitioner to purchase an electric wheelchair. As noted, Petitioner has in her possession a manual wheelchair, which she uses with her lower extremities. The Respondent indicated that upon review, it was determined that the use of an electric wheelchair would not improve ADL performance in the home, was not in line with her care plan, and could lead to a functional decline.

Petitioner bears the burden of proving by a preponderance of the evidence that the Respondent erred in denying her request to purchase an electric wheelchair. Based on the above testimony and evidence, this Administrative Law Judge finds that Petitioner has failed to meet her burden of proof. The functional assessments support the denial here based on the available evidence and as such, Petitioner does not meet the Medicare guidelines for an electric wheelchair.

Accordingly, this Administrative Law Judge finds that Petitioner has failed to meet her burden of proof and that Respondent's decision to deny Petitioner's request for a power wheelchair must be sustained.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Respondent properly denied Petitioner's request for a power wheelchair.

**IT IS THEREFORE ORDERED** that:

The Respondent's decision is **AFFIRMED**.

JS/cg



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**Janice Spodarek**

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30763  
Lansing, Michigan 48909-8139

**DHHS Department Rep.**

Roxanne Perry  
400 S PINE ST  
CAPITAL COMMONS  
LANSING, MI 48909

**Petitioner**

